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IN THE

Supreme Court of the United States

October Term 1947

No. 754

WILLIAM R. REDDING,

Appellant,

vs.

CITY OF LOS ANGELES, *et al.*,

Appellees.

PETITION FOR REHEARING.

Comes now appellant, William R. Redding, and petitions for a rehearing upon the following grounds, to-wit:

I.

The Court has dismissed the appeal upon the following ground:

> "The appeal is dismissed for want of a *substantial Federal question.*"

II.

The Court erred in its holding as to what is a substantial Federal question. Title 28, Sec. 344, gives the appellant the right of appeal where a state statute is involved, where is drawn in question "the validity of a statute of any state, on the ground of its being repugnant to the constitution, treaties, *or laws of the United States.*"

The City Charter of Los Angeles and the state statute of California were construed in conflict with an Act of Congress relating to the preservation of jobs of persons who served faithfully in the Merchant Marine and the encouragement of that service. Such a claim distinctly sets out a substantial Federal question.

Green Bay & M. Canal Co. v. Patten Paper Co., 172 U. S. 58, 43, L. Ed. 364;

St. Louis I. M. & S. R. Co. v. McWhirter, 229 U. S. 265, 57 L. Ed. 1179;

Murray v. Joe Gerrick & Co., 291 U. S. 315, 78 L. Ed. 821;

Senn v. Tile Layers P. L. No. 5 et al., 301 U. S. 468, 81 L. Ed. 1229.

The Federal questions were raised in the court below and passed on in the court below.

Cockroft v. Vose, 14 Wall., 81 U. S. 5, 20 L. Ed. 875;

Sevier v. Haskell, 14 Wall., 81 U. S. 12, 20 L. Ed. 827;

Hurley v. Street, 14 Wall., 81 U. S. 85, 20 L. Ed. 786.

A municipal ordinance is a statute within Title 28, Sec. 344.

Jamison v. Texas, 318 U. S. 413, 87 L. Ed. 869.

This Court has held that the question of national policy as declared by the Act of Congress governs all the

states. It has so held in an O. P. A. case. Certainly it is important to so hold on the question of the development and expansion of the Merchant Marine.

Testa v. Katt, 91 L. Ed. 776.

It is respectfully submitted that this Court has erroneously construed the definition and meaning of a "substantial Federal question" as applied to this case, and that Congress has allowed the right of appeal under Title 28, Sec. 344, U. S. Codes, where the Federal question was raised in the state court and determined by the state court adversely to the claim of petitioner on the question of his job.

The Federal question, as shown by the decision of the state court, was squarely presented to the trial court and the District Court of Appeal, and on petition for hearing in the Supreme Court of the State of California. The decision of the California courts decided squarely against the claim of right under the laws of the United States. It thus appears affirmatively from the record, "not only that a Federal question was presented for decision to the highest court of the state having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, Lynch v. New York, 293 U. S. 52, 54, 79 L. Ed. 191, 192, 55 S. Ct. 16, and cases there cited. Whether these requirements have been met is itself a Federal question."

Honeyman v. Hanan, 300 U. S. 14, 18, 81 L. Ed. 479.

Not only was the Federal question argued and presented to the state court for decision, but it was actually decided and the judgment as rendered could not have been given without deciding it.

Commercial Nat. Bank v. Buckingham, 5 How. 341, 12 L. Ed. 180;

Lawler v. Walker, 14 How. 154, 14 L. Ed. 366;

Mississippi & M. R. Co. v. Rock, 4 Wall. 180, 18 L. Ed. 382;

Parmelee v. Lawrence, 11 Wall. 38, 20 L. Ed. 49.

Where there has been explicit and timely insistence in the state courts that a state statute (including a municipal ordinance or charter provision), as applied, is repugnant to the Federal Constitution, treaties or laws, and that question has been decided contrary to the contentions of the claimed invalidity, it presents a proper question of substance on appeal.

Charlestown Fed Sav. & Loan Assoc. v. Alderson, 324 U. S. 182, 185, 89 L. Ed. 857, 860, and cases therein cited;

Title 28, Sec. 344(a) (Sec. 237(a) of the Jud. Code).

We respectfully submit that a Federal question was raised and presents one of substance regarding a member of the Merchant Marine.

This case involves virtually a "death sentence" to a former police officer who served faithfully and honorably in the United States Coast Guard and thereafter went into the Merchant Marine, where he received a certificate

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of honorable service. Nevertheless, he is the only police officer who is charged with "neglect of duty" for having so served and the only officer whose name is not on the honor roll and who has lost all of his pension rights by reason of having performed so faithful a service to the United States Government. Under the Federal statutes as to the policy of the Government regarding persons who served in the Merchant Marine, we respectfully submit that the construction and application of the statute itself presents a Federal question of substance and that a rehearing should be granted. This is itself a substantial Federal question.

Honeyman v. Hanan, 300 U. S. 14, 18.

Respectfully submitted,

MORRIS LAVINE,
Attorney for Petitioner.

Certificate of Counsel.

Morris Lavine, counsel for petitioner, hereby certifies that this petition for rehearing is taken in good faith and not for purposes of delay, and further certifies that it is based on a matter occurring since the filing of the original petition, to-wit: the order of this Court dismissing the appeal "for want of a substantial Federal question," which appeal had been allowed by the District Court of Appeal, and this petition is a request for a rehearing regarding the order of this Court with respect to whether this is a substantial Federal question, and is restricted to the grounds above specified.

MORRIS LAVINE.